by the tribe and the Secretary. The plan shall contain provision for a viable economy for the tribe, for a method of compensating enrolled members of the tribe who may wish to sell or otherwise dispose of their beneficial interests in the tribal property, and for the preservation forever of the tribal assets of forest (on a sustained yield basis), water, soil, and fish and wildlife. To the extent necessary, the plan shall provide for such terms of transfer pursuant to section 8 of this act, by trust or otherwise, as shall insure the continued fulfillment of the plan. The Secretary, after approving the plan and after securing the approval of the plan by the Governor of Wisconsin, shall cause the plan to be published in the Federal Register."

SEC. 3. Section 8 of such act of June 17, 1954, is amended to read as follows:

"SEC. 8. The Secretary is hereby authorized and directed to transfer to the tribe, immediately following the date of publication in the Federal Register of the plan formulated pursuant to section 7 of this act, the title to all property, real and personal held in trust by the United States for the tribe: *Provided, however,* That if the tribe obtains a charter for a corporation or otherwise organizes under the laws of a State or of the District of Columbia for the purpose, among any others, of taking title to all tribal lands and assets and enterprises owned by the tribe or held in trust by the United States for the tribe, and requests such transfer to be made to such corporation or organization, the Secretary shall make such transfer to such corporation or organization. The Secretary is also authorized and directed to transfer to the tribe, or to a legal entity organized by the tribe, clear and unrestricted title to all buildings and roads equipment utilized on the Menominee Reservation in all cases where there is any uncertainty respecting ownership by the tribe."

With the following committee amendment:

Strike all after the enacting clause and insert the following language: "That section 7 of the act entitled 'An act to provide for a per capita distribution of Menominee tribal funds and authorize the withdrawal of the Menominee Tribe from Federal jurisdiction,' approved June 17, 1954 (68 Stat. 250), is amended to read as follows:

"'SEC. 7. The tribe shall as soon as possible and in no event later than December 31, 1957, formulate and submit to the Secretary a plan for the future control of the tribal property and service functions now conducted by or under the supervision of the United States, including, but not limited to, services in the fields of health, education, welfare, credit, roads, and law and order, and for all other matters involved in the withdrawal of Federal supervision. The Secretary is authorized to provide such reasonable assistance as may be requested by officials of the tribe in the formulation of the plan heretofore referred to, including necessary consultations with representatives of Federal departments and agencies, officials of the State of Wisconsin and political subdivisions thereof, and members of the tribe: *Provided,* That the responsibility of the United States to furnish all such supervision and services to the tribe and to the members thereof, because of their status as Indians, shall cease on December 31, 1958, or on such earlier date as may be agreed upon by the tribe and the Secretary. The plan shall contain provision for protection of the forest on a sustained yield basis, and for the protection of the water, soil, fish and wildlife. To the extent necessary, the plan shall provide for such terms of transfer pursuant to section 8 of this act, by trust or otherwise, as shall insure the continued fulfillment of the plan. The Secretary after approving the plan, shall cause the plan to be published in the Federal Register. The sustained yield management requirement contained in this act shall not be construed by any court to impose a financial liability on the United States.'"

SEC. 2. Section 8 of such act of June 17, 1954, is amended to read as follows:

"'SEC. 8. The Secretary is hereby authorized and directed to transfer to the tribe, on December 31, 1958, or on such earlier date as may be agreed upon by the tribe and the Secretary, the title to all property, real and personal, held in trust by the United States for the tribe: *Provided, however,* That if the tribe obtains a charter for a corporation or otherwise organizes under the laws of a State or of the District of Columbia for the purpose, among any others, of taking title to all tribal lands and assets and enterprises owned by the tribe or held in trust by the United States for the tribe, and requests such transfer to be made to such corporation or organization, the Secretary shall make such transfer to such corporation or organization. The Secretary is authorized, in his discretion, to transfer to the tribe or any member or group of members thereof any federally owned property acquired, withdrawn, or used for the administration of the affairs of the tribe which he deems necessary for Indian use, or to transfer to a public or nonprofit body any such property which he deems necessary for public use and from which members of the tribe will derive benefits'."

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third, was read the third time, and passed.

Mr. LAIRD. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Amendment offered by Mr. LAIRD: Amend the title of the bill to read: "Relating to the formulation of a plan for control of the property of the Menominee Indian Tribe and for other purposes."

The amendment was agreed to.

A motion to reconsider was laid on the table.

TULALIP RESERVATION, WASH.

The Clerk called the bill (H. R. 11456) to authorize the partition or sale of inherited interests in allotted lands in the Tulalip Reservation, Wash., and for other purposes.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. METCALF. Mr. Speaker, reserving the right to object, I want to make a statement as a member of the committee. I voted for this bill only because of the urgency that has been demonstrated. I want to call the attention of the House to the fact that this permits a complete termination of Federal guardianship over Indian property.

Under the complex heirship situation there may be many Indians who have an interest in a piece of property. Some may be illiterate, many will not have been adjudged competent. Yet any single one of these coowners, under the provisions of this bill, can force all the others into court, have the property sold, and require all the owners to accept the proportionate share of whatever the property brings at an auction sale. Rights that the Indians enjoy such as exemption from taxation would be cut off. In many cases service would be by publication and Indian coowners who are incompetent to handle their own affairs by definition would be served by publication and no one appointed to represent them.

Many Indians who are illiterate, who are incompetent, under such legislation as this could have their property taken away from them. If it were not for the urgency of the bill and the fact that this particular tribe of Indians, as stated in the report, is competent and the Indians themselves are competent to administer their property, I would feel it necessary to object.

I do not want this body, Mr. Speaker, to feel this bill sets a precedent for further termination or the proper means of disposing of the Indian heirship problem. It is better to handle these matters under comprehensive legislation such as many of us have pending in the Committee on Indian Affairs.

The SPEAKER. Is there objection to the present consideration of the bill?

There was no objection.

Mr. ENGLE. Mr. Speaker, I ask unanimous consent that the bill, S. 2920, an identical bill to the House bill, be considered in lieu of H. R. 11456.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from California [Mr. ENGLE]?

There being no objection, the Clerk read the Senate bill, as follows:

Be it enacted, etc., That any owner of an interest in any tract of land in the Tulalip Reservation, Wash., in which any undivided interest is now or hereafter held in trust by the United States for an Indian, or is now or hereafter owned by an Indian subject to restrictions against alienation or taxation imposed by the United States, may commence in a State court of competent jurisdiction an action for the partition in kind or for the sale of such land in accordance with the laws of the State. For the purpose of any such action the Indian owners shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the proceeding, and any partition or conveyance of the land pursuant to the proceedings shall divest the United States of title to the land, terminate the Federal trust, and terminate all restrictions against alienation or taxation of the land imposed by the United States.

SEC. 2. Notwithstanding the provisions of the constitution and charter of the Tulalip Tribes of the Tulalip Reservation, any lands that are held by the United States in trust for the Tulalip Tribes, or that are subject to a restriction against alienation or taxation imposed by the United States, or that are hereafter acquired by the Tulalip Tribes, may be sold by the Tulalip Board of Directors, with the consent of the Secretary of the Interior, on such terms and conditions as the Tulalip Board of Directors may prescribe, and such sale shall terminate the Federal trust or restrictions against alienation or taxation of the land: *Provided,* That the proceeds from the sale of any tribal lands acquired otherwise than by purchase shall be deposited in the Treasury of the United States to the credit of the Tulalip Tribes and shall not be expended until otherwise specifically provided by Congress.

The bill was ordered to be read a third time, was read the third time, and passed.

A similar House bill (H. R. 11456) was laid on the table.

A motion to reconsider was laid on the table.

ROSEBURG, OREG.

Mr. TEAGUE of Texas. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H. R. 8123) authorizing the Administrator of General Services to convey certain property of the United States to the city of Roseburg, Oreg., with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 1, line 3, strike out "section 2 of this act" and insert "such reservations and restrictions as may be necessary to protect the interests of the United States."

Page 2, strike out all of section 2.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Senate amendments were concurred in.

A motion to reconsider was laid on the table.

PRIVATE CALENDAR

Mr. ROBERTS. Mr. Speaker, I ask unanimous consent that the call of bills on the Private Calendar be dispensed with at this time due to the fact that the committee did not receive reports from the Government Printing Office in time to consider such reports.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

Mr. FORD. Mr. Speaker, reserving the right to object, I can understand the committee's problem in that regard, but I wonder if it would not be possible to put the Private Calendar over for a period less than the full 2-week period inasmuch as we are getting toward the end of the session? There are some bills on this calendar which might get lost in the last minute rush lest we get them from here over to the other side of the Capitol.

Mr. McCORMACK. Mr. Speaker, if the gentleman will yield, the gentleman from Michigan and the gentleman from Alabama and I had a brief conference on the floor in relation to the inquiry made by my friend from Michigan. I told both of my colleagues that I would ask unanimous consent that it be in order to call the Private Calendar on Monday next. The gentleman's request is a very fair one, to which I responded favorably immediately. The position of the gentleman from Alabama is absolutely correct. I do not know what caused the delay. The Public Printer has been very cooperative. They have done a remarkable job throughout the years, and I am sure there will be no more delays in the future in connection with reports being printed in adequate time for the objectors committee to consider them, as it is their duty to do so. The objectors committee on both the Consent Calendar and the Private Calendar perform an outstanding task for the House. It is work that they assume over and above their work to their districts and their committee work, and it is very burdensome. I want each and every Member of the objectors committee on the Consent Calendar and the Private Calendar to know that the leadership on both sides profoundly appreciate the work that they are doing, which is really beyond their line of duty.

Consequently, Mr. Speaker, if the gentleman will yield for that purpose, I ask unanimous consent that it be in order for the Private Calendar to be called on Monday next.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

CLAIMS OF VATICAN CITY FOR LOSSES AND DAMAGES CAUSED BY UNITED STATES ARMED FORCES DURING WORLD WAR II

Mr. GORDON. Mr. Speaker, I move to suspend the rules and pass the bill (H. R. 10766) to authorize the payment of compensation for certain losses and damages caused by United States Armed Forces during World War II.

The Clerk read as follows:

Be it enacted, etc., That the Secretary of the Treasury is authorized to pay the sum of $964,199.35 to the Vatican City in full and final settlement and discharge of all claims of the Vatican City for losses and damages caused by United States Armed Forces in the Papal Domain Castel Gandolfo during the course of hostilities conducted by such forces against German armed forces in Italy in 1944.

SEC. 2. There is hereby authorized to be appropriated the sum of $964,199.35 to carry out the purposes of this act.

The SPEAKER. Is a second demanded?

Mr. MORANO. Mr. Speaker, I am not opposed to the bill, but in order to get a hearing, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

Mr. GORDON. Mr. Speaker, H. R. 10766, to authorize the payment of compensation for certain losses and damages caused by United States Armed Forces during World War II, is a measure which I hope will receive the unanimous support of this House. Its purpose is to compensate the Vatican for losses and damages caused by United States Armed Forces during World War II. During the course of attacks by United States planes on military targets near the the Papal Domain Castel Gandolfo, the papal domain was accidentally damaged on four different occasions—on February 2, February 10, May 31, and June 4, 1944. The original claim made by the Vatican for the damage was in the amount of $1,525,810.98. The Foreign Affairs Committee has reduced this amount to $964,199.35. This reduced amount is the exact amount which the United States Army Claims Service considers a reasonable assessment.

Mr. Speaker, I believe that this bill is an eminently fair and just one and constitutes an action in keeping with our American tradition of equity and justice. As evidence of the bipartisan support which this bill has, I would like to point out that this bill was introduced by the distinguished majority leader of the House, the Honorable JOHN W. MCCORMACK, and an identical bill, H. R. 10767, was introduced by the distinguished minority leader, the Honorable JOSEPH W. MARTIN.

The amount in this bill is small but the good will involved in it is large. It deserves our wholehearted support.

Mr. Speaker, I yield 5 minutes to the distinguished majority leader, the gentleman from Massachusetts [Mr. McCORMACK].

(Mr. McCORMACK asked and was given permission to revise and extend his remarks.)

Mr. McCORMACK. Mr. Speaker, the pending bill, H. R. 10766, is a deserving measure and one that should pass both branches of the Congress and be signed by the President. A similar bill, H. R. 10767, was also introduced by my distinguished friend from Massachusetts [Mr. MARTIN], the minority leader. So, this bill should properly be known as the McCormack-Martin bill.

The report of the House Committee on Foreign Affairs clearly presents the justification for the passage of this bill. Former Speaker MARTIN and I received a memorandum from the State Department, which is as follows:

WAR DAMAGE TO PAPAL DOMAIN CASTEL GANDOLFO

In a letter of July 10, 1942, President Roosevelt wrote to Pope Pius XII as follows:

"By the time this message reaches your Holiness a landing in force by American and British troops will have taken place on Italian soil. Our soldiers have come to rid Italy of fascism and all its unhappy symbols, and to drive out the Nazi oppressors who are infesting her soil.

"There is no need for me to reaffirm that respect for religious beliefs and for the free exercise of religious worship is fundamental to our ideas. Churches and religious institutions will, to the extent that it is within our power, be spared the devastations of war during the struggle ahead. Throughout the period of operations the neutral status of Vatican City as well as the Papal domains throughout Italy will be respected.

"I look forward, as does Your Holiness, to that bright day when the peace of God returns to the world. We are convinced that this will occur only when the forces of evil which now hold vast areas of Europe and Asia enslaved have been utterly destroyed. On that day we will joyfully turn our energies from the grim duties of war to the fruitful tasks of reconstruction. I am common with all other nations and forces imbued with the spirit of good will toward men, and with the help of Almighty God, we will turn our hearts and our minds to the exacting task of building a just and enduring peace on earth."

On February 2 and 10, May 31, and June 4, 1944, the Papal Domain Castel Gandolfo was hit by bombs dropped by United States planes incidental to an attack upon legitimate military targets in close proximity thereto.

A property damage claim for $1,523,810.98 was presented by the Vatican City authorities on December 10, 1945. According to a survey by the United States Army Claims Service, a fair and reasonable assessment of the property damage, based upon the costs of labor and materials for April 1945 is $964,199.35. It is understood that the principal reason for the difference between the Vatican figure and the Army figure is that the latter does not take account of the cultural and artistic value of the destroyed or damaged property.

The Vatican City authorities were subsequently informally informed that since the

papal domains were not territory of a neutral state but had the status of a neutral diplomatic mission located in the territory of a belligerent (just as, for example, the Swiss Embassy in Berlin), there exists no legal basis on which to recommend to the Congress the payment of the claim.

It is believed that any payment to the Vatican City should be made as a matter of grace so that it cannot be regarded as a precedent.

The message that the late President Roosevelt sent to Pope Pius XII, particularly in looking "to that bright day when the peace of God returns to the world," is just as applicable today as it was when sent by the late Franklin D. Roosevelt to His Holiness, Pope Pius XII, on July 10, 1943.

The enactment into law of this bill will carry out a moral obligation on the part of our Government. It is also an act which brings about a feeling of understanding that cannot be estimated in terms of material values.

I want to express my appreciation to the members of the House Committee on Foreign Affairs for reporting this bill, as a result of which the bill is now before the House for consideration. I strongly urge the passage of the bill. I hope, with the passage of the bill in this body, the Senate will quickly consider and pass the same.

Mr. MORANO. Mr. Speaker, I yield myself such time as I may consume.

(Mr. MORANO asked and was given permission to revise and extend his remarks.)

Mr. MORANO. Mr. Speaker, I am very pleased that this bill and an identical bill, H. R. 10767, were introduced by our distinguished majority leader, the Honorable JOHN W. MCCORMACK, JR., and the distinguished minority leader, the Honorable JOSEPH W. MARTIN, respectively. I know it is typical of both sides of the aisle to join together when it comes to foreign policy considerations. I fully support this bill which will compensate the Vatican City for the damage sustained to the papal domain Castel Gandolfo during World War II from bombs dropped by United States planes during attacks upon targets close to Castel Gandolfo.

I feel that this gesture on the part of the United States Government is one which is really typical of our American way of life. Fundamentally, we judge matters on the basis of what is morally right and morally wrong. It is morally right that the United States compensate the Vatican for this damage. Although it is a small amount of money involved in this bill, it means a great deal to Castel Gandolfo which people from all over the world and from all walks of life have taken such great pleasure and spiritual joy in visiting.

I feel that the sum agreed upon by the committee of $964,199.35 is a fair compromise. It represents the assessment of the damage made by the United States Army Claims Service based upon the prevailing conditions as of April 1945.

I hope that this bill will receive the unanimous endorsement that it justly merits.

Mr. GORDON. Mr. Speaker, I move the previous question.

The SPEAKER. The question is on suspending the rules and passing the bill.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE TO EXTEND

Mr. GORDON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks in the RECORD on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

DANGEROUS EROSION OF STATE SOVEREIGNTY BY DECISIONS OF SUPREME COURT

The SPEAKER. Under previous order of the House, the gentleman from Texas [Mr. IKARD] is recognized for 30 minutes.

(Mr. IKARD asked and was given permission to revise and extend his remarks.)

Mr. IKARD. Mr. Speaker, the past 15 years have witnessed dangerous erosion of State sovereignty by decisions of the Supreme Court. This has been accomplished by reading into acts of Congress an unexpressed intention to supersede State law. In so doing the Court has turned its back on the salutary principles announced by Chief Justice Marshall and followed for more than a century. In *Cohens* v. *Virginia* ((1821) 6 Wheat. 264, 443), Marshall enunciated the tests to be applied in determining whether Congress has so exercised its powers as to control and limit State laws for the punishment of crime.

To interfere with the penal laws of a State—

He wrote—

where they are not leveled against the legitimate powers of the Union, but have for their sole object the internal government of the country, is a very serious measure, which Congress cannot be supposed to adopt lightly or inconsiderately. The motives for it must be serious and weighty. It would be undertaken deliberately and the intention would be clearly and unequivocally expressed. An act * * * ought not to be construed as to imply this intention, unless its provisions were such as to render the construction inevitable.

For six score years, the Supreme Court faithfully adhered to this doctrine. In 1937, Chief Justice Hughes declared on behalf of a unanimous Court in *Kelley* v. *Washington* ((1937) 302 U. S. 1, 10) that—

The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where the repugnance is so direct and positive that the two acts cannot be reconciled or consistently stand together.

But in 1941, the Supreme Court cavalierly thrust these precedents aside. By a 6 to 3 decision it struck down the Pennsylvania Alien Registration Act in *Hines* v. *Davidowitz* ((1941) 312 U. S. 52, 67). In attempting to justify this decision, Mr. Justice Black disposed of prior cases to his own satisfaction by saying:

There is not—and from the very nature of the problem there cannot be—any rigid formula or rule which can be used as a universal pattern to determine the meaning and purpose of every act of Congress. This Court, in considering the validity of State laws in the light of treaties or Federal laws touching the same subject, has made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interference. But none of these expressions provide an infallible constitutional test or an exclusive constitutional yardstick. In the final analysis, there can be no one crystal clear distinctly marked formula. Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

Mr. Justice Stone vigorously dissented in an opinion in which two other Justices joined. He pointed out that the existence of national power to conduct foreign relations and negotiate treaties does not foreclose legislation dealing exclusively with aliens as such. This Court has consistently held that treaties of the United States for the protection of resident aliens do not supersede such legislation unless they conflict with it. He went on to say:

As construed and applied by the opinion of the Court the Federal act denies to the States the practicable means of identifying their alien residents and of recording their whereabouts and it withholds from the States the benefit of the information secured under the Federal act except insofar as it may be made available to them on application to the Attorney General.

* * * * *

Every act of Congress occupies some field, but we must know the boundaries of that field before we can say that it has precluded a State from the exercise of any power reserved to it by the Constitution. To discover the boundaries we look to the Federal statute itself, read in the light of its constitutional setting and its legislative history.

* * * * *

But no words of the statute, or of any committee report, or any congressional debate indicate that Congress intended to withdraw from the States any part of their constitutional power over aliens within their borders. We must take it that Congress was not unaware that some 19 States have statutes or ordinances requiring some form of registration for aliens, 7 of them dating from the last war. The repeal of this legislation is not to be inferred from the silence of Congress in enacting a law which at no point conflicts with the State legislation and is harmonious with it.

Within a year this decision was followed by another which paralyzed State power in a field equally vital to the welfare of its citizens—the enforcement of sanitary standards in the manufacture of food products. By a bare majority, the Court held in *Cloverleaf Butter Company* v. *Patterson* ((1942) 315 U. S. 148) that Alabama could not seize spoiled packing stock butter held by a manu-

facturer for the production of renovated butter. The reason assigned for this startling conclusion was that it conflicted with a Federal law which authorized the Secretary of Agriculture to inspect renovated butter sold in interstate commerce. To be sure, Congress had not expressed any intention to supersede State law. Enforcement of Alabama's statute would not have interfered in any way with Federal inspection. Nevertheless, by some mysterious course of reasoning the majority came to the conclusion that Congress hardly intended the intrusion of State authority during the very preparation of a commodity subject to the surveillance and comprehensive specifications of the Department of Agriculture. Once more Justice—now Chief Justice—Stone dissented, together with three of his colleagues. He pointed out that the decision was, in his words, "a radical departure from the salutary principle that Congress, in enacting legislation within constitutional authority, will not be deemed to have intended to strike down a State statute designed to protect the health and safety of the public unless the State act, in terms or in its practical administration, conflicts with the act of Congress or plainly and palpably infringes its policy." Bluntly he insisted that "not only is there a complete want of conflict between the two statutes and their administration, but it seems plain that the Alabama statute both by its terms and in its practical administration aids and supplements the Federal regulation and policy. Consequently, there is no room for any inference that Congress by its enactment, sought to stay the hands of the State in the exercise of a power with which the Federal act does not conflict."

Mr. Justice Frankfurter said of the decision that "if ever there was an intrusion by this court into a field that belongs to Congress, and which it has seen fit not to enter, this is it."

But Chief Justice Stone was fighting a losing battle. In the decade since his death the Court has pursued ever more relentlessly the course of reducing the States to insignificance. This has been particularly true in the field of labor legislation. The first step in this direction was taken in 1945, while Stone was still on the bench. In *Hill* v. *Florida* ((1945) 325 U. S. 538), the Court, in a sweeping decision denied the authority of Florida to require a business agent of a labor union to be a citizen of the United States for more than 10 years, to be a person of good moral character, who has not been convicted of a felony; to require such business agents to be licensed with the payment of an annual fee of $1, and to require labor unions to file a written report with the Secretary of State disclosing its name, the location of its offices and the names and addresses of its officers. In vain, Mr. Justice Frankfurter protested that—

> The rights Congress created, the obligations it defined the machinery it devised for enforcing these rights and securing obedience to these obligations, all were exclusively concerned with putting the strength of the Government against this (forbidden) conduct by employers * * *. There is not a breath in the act referring to any aspect of union activity unrelated to employer interference therewith. By refusing to legislate beyond that, Congress did not forbid the States from so legislating."

Next the Court ruled that the New York State Labor Relations Board had no jurisdiction to certify a union as collective bargaining representatives of foremen—*Bethlehem Steel Co.* v. *New York State Labor Relations Board* (1947) 330 U. S. 767).

It underscored its complete departure from the principles followed from the time of Chief Justice Marshall to that of Chief Justice Hughes by saying that—

> Congress has not seen fit to lay down even the most general of guides to construction of the act, as it sometimes does, by saying that its regulation either shall or shall not exclude State action.

It has overthrown the certification of a union as a bargaining agent for employees of a local telephone company, on the ground of supposed conflict with the National Labor Relations Act, even though the National Labor Relations Board had not undertaken to determine the appropriate bargaining representative for the employees of that company—*La Crosse Telephone Corporation* v. *Wisconsin Employment Relations Board* ((1949) 336 U. S. 18). It struck down the strike vote provisions of Michigan's labor mediation law which was designed to avert strikes with the States by requiring approval of a strike by a majority vote of the employees before it could be called, *Automobile Workers* v. *O'Brien* ((1950) 339 U. S. 454). Although three members of the court noted that the national emergency provisions of the Taft-Hartley Act indicated that the principle of collective bargaining should to some extent be subordinated to the public interest, and found no indication in that act that the States were not equally free to protect the public when in State emergencies, the Court denied the authority of Wisconsin to protect its people against interruption of essential public utility services by banning strikes which would cause such interruptions—*Bus Employees* v. *Wisconsin Employment Relations Board* ((1951) 340 U. S. 383). And the Court has not been content to strike down State laws which by dubious inferences it has found in conflict with an imputed although unexpressed intention of Congress. It has denied the authority of State courts to afford a remedy for conduct which was forbidden by both State and Federal law. In *Garner* v. *Teamsters Union* ((1953) 346 U. S. 485) it held that a State court could not enjoin picketing intended to coerce an employer into compelling or influencing his employees to join a union in violation of both Federal and State statutes which forbade such coercion. One sentence in this opinion shows how far the Court has moved from the principle formerly applied—that State laws were superseded only in case of direct and positive conflict with Federal law:

> We must spell out—

The Court said:

> from conflicting indications of congressional will the area in which State action is still permissible.

Acting on the same tenuous inferences it reversed a State court decision enjoining picketing in a jurisdictional dispute between two unions which violated the State law against restraint of trade—*Weber* v. *Anheuser-Busch Inc.* ((1955) 348 U. S. 468).

Serious as these cases are in their denial of State power to deal with the particular problems involved, they pale into insignificance in comparison with the flagrant and indefensible denial of State power in the recent Nelson case—*Pennsylvania* v. *Nelson* ((1956) 350 U. S. 497). There the Court reversed the conviction of Steve Nelson, an acknowledged member of the Communist Party, for violation of the Pennsylvania sedition law.

Despite the fact that Congress had inserted a provision in the criminal code declaring that "Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof," the Court said that the Federal statutes touched a field in which the Federal interest is so dominant that the Federal system must be assured to preclude enforcement of State laws on the same subject. Despite the fact that 42 States have sedition laws, and that the sponsor of the measure declared at the time of its adoption that it would not affect State laws, the majority of the court held that "the scheme of Federal regulation" is "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." Disregarding the fact that the Attorney General of the United States had advised that the State laws did not impede enforcement of the Federal law and urged that they be upheld, the majority of the Supreme Court concluded that "enforcement of State sedition acts presents a serious danger of conflict with the administration of the Federal program."

There is not a word in the Smith Act which justifies the decision in the Nelson case. As Justice Reed pointed out in his dissenting opinion:

> In the responsibility of national and local governments to protect themselves against sedition there is no dominant interest * * * Mere fear by courts of possible difficulties does not seem to us in these circumstances a valid reason for ousting a State from exercise of its police power. These are matters for legislative determination.

Obviously, decisions based on such nebulous grounds are not legal decisions; they are dictated by disapproval of the policy of the State laws in question. As a recent writer in the Michigan Law Review puts it:

> It is obvious from a reading of the opinions that a judge's determination on the issue of preemption is profoundly influenced by view as to the wisdom or constitutionality on other grounds of the State act in question. * * * Stern disapproval of the State laws, moreover, stands out all through the majority opinions in *Hines* v. *Davidowitz* and *Commonwealth* v. *Nelson*. Since judges, like many other informed persons, differ sharply on the question of how best to meet the problem of internal subversion, it may be confidently predicted that considerations of this kind will continue to influence the